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## State v. Beeson Appellant's Brief Dckt. 43864

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SARA B. THOMAS  
State Appellate Public Defender  
I.S.B. #5867

JENNY C. SWINFORD  
Deputy State Appellate Public Defender  
I.S.B. #9263  
P.O. Box 2816  
Boise, ID 83701  
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43864
	)	
v.	)	ADA COUNTY NO. CR 1985-13786
	)	
JUSTIN MILO BEESON,	)	
	)	
Defendant-Appellant.	)	APPELLANT'S BRIEF
	)	

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STATEMENT OF THE CASE

Nature of the Case

In 1986, Justin Milo Beeson was sentenced to an indeterminate life sentence for the crime of first degree murder, plus a concurrent fourteen-year sentence for grand theft. Mr. Beeson was seventeen years old. After serving approximately thirty years of his sentence, Mr. Beeson filed a motion pursuant to Idaho Criminal Rule 35 to correct an illegal sentence. The district court denied his motion. Mr. Beeson appeals.

Statement of Facts and Course of Proceedings

On February 7, 1986, the State filed an Information charging Mr. Beeson with two counts of first degree murder, rape, and grand theft, plus a sentencing enhancement for use of a deadly weapon. (R., pp.55–59.) The State also filed a Notice of Intent to Seek

the Death Penalty. (R., pp.60–61.) Pursuant to a plea agreement with the State, Mr. Beeson pled guilty to one count of murder and grand theft. (R., p.125.) The State agreed to dismiss the remaining charges and the sentencing enhancement. (R., p.125.) The district court sentenced Mr. Beeson to an indeterminate term of life imprisonment for murder and fourteen years for grand theft, to be served concurrently. (R., pp.131–33, 136–38.) Mr. Beeson was a juvenile during the proceedings. (R., p.299 (date of birth).)

On October 7, 2015, Mr. Beeson, pro se, filed a motion pursuant to Idaho Criminal Rule 35 (“Rule 35”) to correct an illegal sentence. (R., pp.268–70.) He asserted that his indeterminate life sentence was unconstitutional under the Eighth Amendment. (R., p.269.) Mr. Beeson also argued that the State breached the plea agreement. (R., p.269.) The district court issued an order denying Mr. Beeson’s Rule 35 motion. (R., pp.279–81.) Mr. Beeson timely appealed. (R., pp.283–85, 305–06.)

### ISSUE

Did the district court abuse its discretion when it denied Mr. Beeson’s Rule 35 motion?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. Beeson’s Rule 35 Motion

“Pursuant to Idaho Criminal Rule 35(a), a district court may correct an illegal sentence at any time.” *State v. Meier*, 159 Idaho 712, 713 (Ct. App. 2016); *see also* I.C.R. 35(a) (“The court may correct a sentence that is illegal from the face of the record at any time.”). As a question of law, the Court exercises free review over whether a sentence is illegal. *State v. Ramsey*, 159 Idaho 635, 636 (Ct. App. 2015). “An illegal sentence under Rule 35 is one in excess of a statutory provision or otherwise contrary to applicable law.” *State v. Alsanea*, 138 Idaho 733, 745 (Ct. App. 2003). “The rule is

limited to legal questions surrounding the defendant's sentence, and any factual issues must be apparent from the face of the record." *Ramsey*, 159 Idaho at 636.

Seventeen-year-old Mr. Beeson was sentenced to an indeterminate life sentence in 1986. (R., pp.136–38.) Under the indeterminate sentencing scheme in effect at the time, a defendant was sentenced to a maximum indeterminate term, and the actual period of confinement was decided by the Commission for Pardons and Parole. *State v. Toohill*, 103 Idaho 565, 569 (Ct. App. 1982); see *State v. Knight*, 114 Idaho 923 (Ct. App. 1988) (discussing the Unified Sentencing Act of 1987). The former I.C. § 20-223 provided that “for purposes of parole eligibility . . . a sentence of thirty years or more must be treated as a life sentence thus making a defendant serving a sentence of thirty years or more eligible for parole after ten years.” *State v. Wood*, 125 Idaho 911, 913 (1993), *reh’g on other grounds* (1994). Although a life sentence “is not and never has been a thirty-year sentence,” it was treated as such for parole purposes. *State v. Murphy* 144 Idaho 152, 153 (Ct. App. 2007) (per curiam). Thus, Mr. Beeson was eligible for parole after serving ten years of his indeterminate life sentence. *State v. Kaiser*, 108 Idaho 17, 19 (1985) (“A person serving an indeterminate life sentence is eligible for parole under I.C. § 20-223 after serving ten years.”); see also, e.g., *Murphy*, 144 Idaho at 152–53; *Wood*, 125 Idaho at 913; *State v. Wilde*, 104 Idaho 461, 462 (Ct. App. 1983); *King v. State*, 93 Idaho 87, 92–93 (1969).

Mindful that Mr. Beeson received a life sentence with the possibility of parole, he nonetheless asserts that his sentence is unconstitutional under the Eighth Amendment. In *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the United States Supreme Court held that life imprisonment without the possibility of parole for a juvenile offender is

unconstitutional under the Eighth Amendment. *Id.* at 2469. The holding from *Miller* applies retroactively. *Montgomery v. Louisiana*, 136 S. Ct. 718, 732–37 (2016). Other United States Supreme Court case law indicates harsh adult penalties for juveniles are cruel and unusual. See *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (holding the Eighth Amendment forbids the imposition of the death penalty on all juvenile offenders); *Graham v. Florida*, 560 U.S. 48, 76, 82 (2011) (holding the Eighth Amendment forbids the imposition of life imprisonment without the possibility of parole on juveniles who commit non-homicide offenses). Mindful that *Miller* does not directly apply to Mr. Beeson’s sentence, he nonetheless submits that any life sentence for a juvenile is unconstitutional under the Eighth Amendment. As he argued in his Appellant’s Brief, filed in district court, Mr. Beeson recognizes that his sentence contains the possibility of parole in theory, but he contends that the fact that he has served thirty years without being paroled shows he actually has a fixed life sentence. (R., pp.287–95.) Moreover, he continues to assert that the State is “in breach of the plea agreement” due to this de facto fixed life sentence, mindful that the face of the record does not clarify his claim. (R., pp.269, 287–95.) Therefore, Mr. Beeson contends that the district court erred by denying his Rule 35 motion to correct an illegal sentence.

CONCLUSION

Mr. Beeson respectfully requests that this Court reverse the district court's order denying his Rule 35(a) motion and remand this case for further proceedings.

DATED this 28<sup>th</sup> day of April, 2016.

/s/ \_\_\_\_\_  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28<sup>th</sup> day of April, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JUSTIN MILO BEESON  
INMATE #24671  
ISCI  
PO BOX 14  
BOISE ID 83707

TIMOTHY HANSEN  
DISTRICT COURT JUDGE  
DELIVERED VIA EMAIL

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
DELIVERED VIA EMAIL

/s/ \_\_\_\_\_  
MAGALI CEJA  
Administrative Assistant

JCS/mc